

1 THE HONORABLE THOMAS S. ZILLY

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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 THOMAS SHIELDS,

11 Plaintiff,

No. C11-926Z

12 vs.

ORDER

13 THE BOEING COMPANY, a Delaware  
14 Corporation, and COMFORCE TECHNICAL  
15 SERVICES, INC., a Delaware Corporation,

16 Defendants.

17 This MATTER comes before the Court on Defendants' motion to dismiss,  
18 docket no. 3. For the following reasons, the Court GRANTS Defendants' motion to  
19 dismiss under 12(b)(6) and DISMISSES the case without prejudice and with leave to  
20 amend.  
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22 I. **BACKGROUND**

23 On April 28, 2011, Plaintiff Thomas Shields filed suit in Washington State  
24 Superior Court against his former employer, COMFORCE, a staffing company, and  
25 Boeing, where he provided services through COMFORCE. Notice of Removal, at 11  
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(docket no. 1). On June 2, 2011, Defendants removed the case on diversity jurisdiction to federal court. Notice of Removal. Defendants now move to dismiss Mr. Shields' case for insufficient process, insufficient service of process, and for failure to state a claim under Fed. R. Civ. P. 12(b)(4), 12(b)(5), and 12(b)(6), respectively. Plaintiff has not responded to the motion to dismiss.<sup>1</sup>

## II. DISCUSSION

### A. Standards of Review

#### a. *Rule 12(b)(4) and 12(b)(5)*

Federal Rule of Civil Procedure 12(b)(4) allows for dismissal based on insufficient process, and was designed to allow challenges to irregularities in the contents of a summons. Rule 12(b)(5) allows for dismissal based on insufficient service of process, allowing a defendant to challenge the method of service attempted by the plaintiff.

#### b. *Rule 12(b)(6)*

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. The plaintiff is obligated to provide grounds for his entitlement to relief that amount to more than labels and

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<sup>1</sup> The Court construes Plaintiff's lack of response as an admission that the motion has merit. See Local Rule CR 7(a)(2).

1 conclusions or a formulaic recitation of the elements of a cause of action. Bell Atl.  
2 Corp. v. Twombly, 550 U.S. 544, 545 (2007). The Court “may generally consider  
3 only allegations contained in the pleadings, exhibits attached to the complaint, and  
4 matter properly subject to judicial notice” when ruling on a motion to dismiss.  
5 Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1030-31 (9th Cir. 2008)  
6 (internal quotation and citation omitted). If the Court dismisses the complaint, or  
7 portions thereof, it must consider whether to grant leave to amend. Lopez v. Smith,  
8 203 F.3d 1122, 1130 (9th Cir. 2000). “[A] district court should grant leave to amend  
9 even if no request to amend the pleading was made, unless it determines that the  
10 pleading could not possibly be cured by the allegation of other facts.” Id. (internal  
11 quotation omitted).  
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14 **B. Plaintiff Has Until August 26, 2011 to Properly Serve Defendants**

15 Defendants argue that the Court should dismiss Mr. Shields’ case for failing to  
16 comply with the applicable statutory requirements for proper service. Plaintiff sent a  
17 copy of his complaint, without a summons, by certified mail to Boeing’s Tukwila,  
18 Washington office, and to COMFORCE’s Bellevue, Washington Office. Although  
19 Plaintiff’s method of service currently fails to comply with the applicable statutory  
20 requirements,<sup>2</sup> Fed. R. Civ. P. 4(m) gives Plaintiff 120 days to serve Defendants after  
21 filing his complaint. Plaintiff therefore has until August 26, 2011 to properly serve  
22 Defendants, and Defendants’ Rule 12(b)(4) and 12(b)(5) arguments are premature.  
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25 <sup>2</sup> For example, Washington Court Rule 4(d)(1) requires that a plaintiff serve the  
26 defendants with the complaint and the summons.

1 See, e.g., Link v. Rhodes, No. C06-0386 MHP, 2006 WL 3050859, at \*7 (N.D. Cal.  
2 Oct. 25, 2006).

### 3 **C. Plaintiff fails to state a claim upon which relief can be granted**

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5 Plaintiff's complaint does not state a cause of action, nor does it allege he is  
6 entitled to damages. He states that his employment was terminated, but he does not  
7 assert that his termination was wrongful. Indeed, he does not even state that he was  
8 fired, rather that he was informed that his "contract had ended." He describes several  
9 incidents during his employment, including being told he could not have a certain  
10 screen saver deemed offensive, leaving an unreturned phone message, and nearly  
11 being "knocked of [sic] my feet" in a parking lot by passing people, but Plaintiff fails  
12 to allege that these incidents were somehow wrongful. Even taking everything in  
13 Plaintiff's complaint as true, and even giving Plaintiff's pro se complaint "the benefit  
14 of liberal construction,"<sup>3</sup> Plaintiff fails to state both a cognizable legal theory and fails  
15 to provide sufficient factual content to allow the court to draw a reasonable inference  
16 that Plaintiff is entitled to some form of relief.

### 19 **III. CONCLUSION**

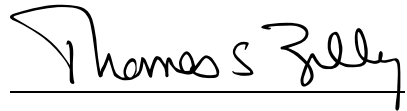
20 For the foregoing reasons, the Court GRANTS Defendants' motion to dismiss  
21 under 12(b)(6) and DISMISSES Plaintiff's case without prejudice.  
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26 <sup>3</sup> Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010).

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2 IT IS SO ORDERED.

3 DATED this 8th day of July, 2011.  
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7 Thomas S. Zilly  
8 United States District Judge  
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